

# MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE  
STATE OF MISSISSIPPI  
BY THE  
1972 SESSION OF THE LEGISLATURE

## COURT RULES

March 2022 Supplement to the  
2021 Two-volume Edition

*Prepared by the Editorial Staff of the Publisher*



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## PREFACE

### **Use of Rules Supplement; format.**

The March 2022 Supplement to the 2021 two-volume Edition of the Mississippi Court Rules Annotated is a publication of LexisNexis. It has been edited, annotated and indexed by the staff of the publishers. The Supplement reflects all changes and additions to the Rules, the official Comments and Notes, and the Forms received since the publication of the 2021 two-volume Rules Edition; the annotations are reviewed and updated, providing the user with the most current and useful information.

Each set of rules included in this Supplement will be followed by an index if the Supplement contains new rules for the set or if there are amendments to existing rules that necessitate changes in the index appearing in the 2021 two-volume Edition.

The material contained in this Supplement will be incorporated into the 2022 two-volume Edition of the Mississippi Court Rules Annotated.

### **Scope of rules and annotations.**

This Supplement includes all changes and additions to the Rules, the official Comments and Notes, and the Forms that have taken place since publication of the 2021 two-volume Edition up to and including amendments received by the publisher through February 16, 2022. In addition, notes construing the Rules have been taken from the reports of decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 3rd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

The annotations also include Editor's notes inserted by the publisher's editorial staff to explain references or to call attention to obvious errors, inconsistencies or ambiguities in the Rules, the official Comments and Notes, and the Forms and to provide advance information on proposed new rules. Also, brackets have been editorially inserted around material in the text, when

## PREFACE

necessary, to correct misspellings, punctuation or language and incorrect references to the Rules, sections of the Code, titles of positions, or names of institutions.

### **Amendments, additions, changes, and revisions of rules.**

Amendments, additions, changes, and revisions since the 2021 two-volume Edition of the Mississippi Court Rules and included in this Supplement are to the following:

#### **Mississippi Rules of Civil Procedure**

Rule 29 and Advisory Committee Historical Note

Rule 30 and Advisory Committee Historical Note

Rule 33 and Advisory Committee Historical Note

Rule 34 and Advisory Committee Historical Note

#### **Mississippi Rules of Criminal Procedure**

Order adopting the Mississippi Rules of Criminal Procedure

#### **Local Uniform Civil Rules of the U.S. District Courts**

Rule 7

Rule 16

Rule 83.1

### **Information, suggestions, comments, and questions.**

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March 2022

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# MISSISSIPPI RULES OF CIVIL PROCEDURE

## CHAPTER V. DEPOSITIONS AND DISCOVERY

Rule

- 29. Stipulations regarding discovery procedure.
- 30. Depositions upon oral examination.
- 33. Interrogatories to parties.
- 34. Production of documents and things and entry upon land for inspection and other purposes.

## CHAPTER V. DEPOSITIONS AND DISCOVERY

### Rule 29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time for any form of discovery must have court approval if extension would interfere with the time set for completing discovery, for hearing a motion, or for trial.

**HISTORY:** Comments repealed effective July 1, 2014; amended effective October 7, 2021, and Advisory Committee Historical Note added.

### ADVISORY COMMITTEE HISTORICAL NOTE

Effective October 7, 2021, M.R.C.P. 29 was amended so as to authorize the parties to stipulate to extensions of time for any form of discovery without court approval unless such extension would interfere with a court-ordered discovery deadline, a hearing date, or trial.

### Rule 30. Depositions upon oral examination.

(a) *When depositions may be taken.* — After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of the summons upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given under subsection (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) *Notice of examination: general requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization.* —

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is

to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A notice may provide for the taking of testimony by telephone. If necessary, however, to assure a full right of examination of any deponent, the court in which the action is pending may, on motion of any party, require that the deposition be taken in the presence of the deponent.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice: (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless his deposition is taken before expiration of the thirty-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subsection (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The notice of deposition required under (1) of this subsection (b) may provide that the testimony be recorded by other than stenographic means, in which event the notice shall designate the manner of recording and preserving the deposition. A court may require that the deposition be taken by stenographic means if necessary to assure that the recording be accurate. A motion by a party for such an order shall be addressed to the court in which the action is pending; a motion by a witness for such an order may be addressed to the court in the district where the deposition is taken.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) For purposes of this Rule, and Rules 28(a), 37(a)(1), 37(b)(1), and 45(b), a deposition shall be deemed to be taken in the county where the deponent is physically present to answer questions propounded to him.

(c) *Examination and cross-examination; record of examination; objections.*

— Examination and cross-examination of witnesses may proceed as permitted at the trial. The testimony of the witness shall be recorded either stenographically or as provided in subsection (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed upon the payment of the reasonable

charges therefor. All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the transcription or recording. Evidence objected to shall be taken subject to the objections. An objection must be stated concisely and in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion to limit or terminate the deposition under M.R.C.P. 30(d). In lieu of participating in the oral examination, parties may serve written questions on the party taking the deposition, who shall propound them to the witness and see that the answers thereto are recorded verbatim.

(d) *Motion to terminate or limit examination.* — At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in Rule 26(d). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Rule 37(a)(4) applies to the award of expenses incurred in relation to the motion.

(e) *Submission to witness; changes; signing.* — When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection (b)(4) of this rule, and if the transcription or recording thereof is to be used at any proceeding in the action, such transcription or recording shall be submitted to the witness for examination, unless such examination is waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the transcription or stated in a writing to accompany the recording, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons shall promptly be served upon all parties by the party taking the deposition. The transcription or recording shall then be affirmed in writing as correct by the witness, unless the parties by stipulation waive the affirmation. If the transcription or recording is not affirmed as correct by the witness within thirty days of its submission to him, the reasons for the refusal shall be stated under penalty of perjury on the transcription or in a writing to accompany the recording by the party desiring to use such transcription or recording. The transcription or recording may then be used fully as though affirmed in writing by the witness, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to affirm require rejection of the deposition in whole or in part.

(f) *Certification; exhibits; copies; notice of filing.* —

(1) When a deposition is stenographically taken, the stenographic reporter shall certify, under penalty of perjury, on the transcript that the witness was sworn in his presence and that the transcript is a true record of the testimony given by the witness. When a deposition is recorded by other than stenographic means as provided in subsection 30(b)(4) of this Rule, and

thereafter transcribed, the person transcribing it shall certify, under penalty of perjury, on the transcript that he heard the witness sworn on the recording and that the transcript is a correct writing of the recording. A deposition so certified shall be considered prima facie evidence of the testimony of the witness.

(2) Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party. Whenever the person producing materials desires to retain the originals, he may substitute copies of the originals, or afford each party an opportunity to make copies thereof. In the event the original materials are retained by the person producing them, they shall be marked for identification and the person producing them shall afford each party the subsequent opportunity to compare any copy with the original. He shall also be required to retain the original materials for subsequent use in any proceeding in the same action. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(3) Upon payment of reasonable charges therefor, the stenographic reporter, or in the case of a deposition taken pursuant to subsection 30(b)(4) of this rule, the party taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(4) If all or part of the deposition is filed with the court, the party making the filing shall give prompt notice thereof to all other parties.

(g) *Failure to attend or to serve subpoena; expenses.* —

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) *Expenses generally not treated as court costs.* — No part of the expenses of taking depositions, other than the serving of subpoenas, shall be adjudged, assessed or taxed as court costs.

**HISTORY:** Amended effective March 1, 1989; Amended effective July 1, 1997; Amended effective October 7, 2021, and Advisory Committee Historical Note added.

#### ADVISORY COMMITTEE HISTORICAL NOTE

Effective October 7, 2021, M.R.C.P. 30(c) was amended to require that objections be stated concisely and non-argu-mentatively and to specify the limited instances in which a deponent may be instructed not to answer a question.

**Rule 33. Interrogatories to parties.**

(a) *Availability; procedures for use.* — Any party may serve as a matter of right upon any other party written interrogatories not to exceed thirty in number to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Each interrogatory shall consist of a single question. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Leave of court, to be granted upon a showing of necessity, shall be required to serve in excess of thirty interrogatories.

(b) *Answers and Objections.* —

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37 (a) with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope; use at trial.* — Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) *Option to produce business records.* — Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specification provided

shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained.

**HISTORY:** Amended effective April 13, 2000; Comments repealed and Advisory Committee Notes amended effective July 1, 2014; Amended October 7, 2021, and Advisory Committee Historical Note added.

#### ADVISORY COMMITTEE HISTORICAL NOTE

Effective October 7, 2021, Rule 33(d) was amended to require a party who chooses to respond to an interrogatory by producing business records to specify the records from which each response may be

ascertained in sufficient detail so that the requesting party may locate and identify the records as readily as the responding party could.

### **Rule 34. Production of documents and things and entry upon land for inspection and other purposes.**

(a) *Scope.* — Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably useable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26 (b).

#### (b) *Procedure.* —

(i) *Requests.* The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

#### (ii) *Responses and Objections.*

(A) *Time to Respond.* The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time.

(B) *Responding to Each Item.* The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the grounds for objection shall be stated with specificity, including the reasons. The responding party may state that it will produce copies of

documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of the objection. An objection to a part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form - or if no form was specified in the request - the responding party must state the form or forms it intends to use. Pursuant to Rule 26(b)(5), a responding party may also object to production of electronically stored information that is not reasonably accessible because of undue burden or cost.

(E) *Producing the Documents or Electronically Stored Information.* When producing documents, the producing party shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request that call for their production. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A party need not produce the same electronically stored information in more than one form.

(F) *Motion to Compel.* The party submitting the request may move for an order to compel discovery under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Persons not parties.* — As provided in Rule 45, a party may compel a nonparty to produce documents and tangible things or to permit inspection.

**HISTORY:** Amended effective July 1, 2013, to address production of electronically stored information; Comments repealed effective July 1, 2014; Amended effective October 7, 2021, and Advisory Committee Historical Note added.

#### ADVISORY COMMITTEE HISTORICAL NOTE

Effective October 7, 2021, M.R.C.P. 34 was amended. M.R.C.P. 34(b) was subdivided and captions were added. In addition, the amendment requires an objecting party to state the objection with

specificity, including the reasons for the objection, and to indicate whether any materials are being withheld based upon the objection. M.R.C.P. 34(c) was amended to include a reference to M.R.C.P. 45.

# MISSISSIPPI RULES OF CRIMINAL PROCEDURE ADOPTED EFFECTIVE JULY 1, 2017

## Rule 14.1. Nature and contents.

### JUDICIAL DECISIONS

#### ANALYSIS

Verbal notice.  
Illustrative cases.

#### Verbal notice.

Verbal notice by the prosecutor and a verbal acknowledgment by defense counsel does not meet the requirement of Rule 14.1(b). *Hughes v. State*, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

#### Illustrative cases.

Defendant was not sentenced according to new rules of criminal procedure, and therefore defendant's sentence had to be vacated and remanded for a new sentence in accordance with Miss. Code Ann. § 97-17-23(1). *Hughes v. State*, 291 So. 3d 792, 2020 Miss. App. LEXIS 41 (Miss. Ct. App. 2020).

## ORDER ADOPTING THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE

### SUPREME COURT OF MISSISSIPPI

The Mississippi Constitution mandates certain procedural requirements in the criminal law of this State. And the Mississippi Legislature and this Court, acting on the respective authority vested in them by the Mississippi Constitution, have articulated additional procedural requirements. In order to promote justice, uniformity, and efficiency in our courts, we find it necessary and reasonable now to combine all of the requirements governing criminal procedure in the courts of this State into a singular set of rules. Therefore, pursuant to the inherent authority vested in this Court by the Constitution of the State of Mississippi, as discussed in *Newell v. State*, 308 So. 2d 71 (Miss. 1975), we adopt the rules attached hereto as the Mississippi Rules of Criminal Procedure, which shall govern the procedure in all criminal proceedings in the Circuit, County, Justice and Municipal Courts of this State. These rules shall take effect on July 1, 2017.

The Clerk of this Court is authorized and directed to spread this order and the rules attached hereto at large on the minutes of the Court, and the Clerk is further authorized and directed to forward a certified copy thereof to West Publishing Company for publication in a forthcoming edition of Southern Reporter, Mississippi Cases, the official publication of decisions of this Court.

SO ORDERED, this the 13th day of December, 2016.

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ANN H. LAMAR  
JUSTICE, FOR THE COURT

ALL JUSTICES AGREE.

**UNIFORM LOCAL CIVIL RULES  
OF THE  
UNITED STATES DISTRICT COURTS  
FOR THE  
NORTHERN AND THE SOUTHERN DISTRICTS OF  
MISSISSIPPI**

**Rule**

- 5. Original filings and removals.
- 7. Motions and other papers.
- 16. Pretrial conferences.
- 83.1. Attorneys: admission and conduct.

**Rule 5. Original filings and removals.**

(a) *Original filings.* — In all civil actions, the plaintiff must file with the clerk of court the original complaint.

(1) **Civil cover sheet.** — A civil cover sheet (Form JS 44) must be filed with each original complaint or petition filed. A link to all national forms can be found on the courts' Websites.

(2) **Filing fees.** — Filing fees must be paid to the clerk of court upon filing of each original complaint or petition in accordance with the fee schedule maintained by the clerk of court.

**(b) Removals:**

(1) **Required Filing of Entire State Court Record and Unresolved Motions.** — In addition to the requirements for removal set forth in 28 U.S.C. § 1446, a defendant or defendants desiring to remove any civil action or criminal prosecution from a state court must file a copy of the entire state court record no later than 14 days from the date of removal. Further, within 14 days after the Case Management Conference, the parties must file as separate docket items any unresolved motions that were filed in state court and that they wish to advance.

(2) When removing a state court action to Bankruptcy Court, the Notice of Removal, citing bankruptcy as a jurisdictional basis, must be filed with the United States District Court Clerk's Office in the appropriate district and division. A motion to transfer the case from District Court to Bankruptcy Court must also be promptly filed. When docketing the motion to transfer, counsel will be directed to docket the motion under an event entry on CM/ECF that will generate an immediate notice to the Bankruptcy Court that such a motion has been filed in the District Court. If the movant desires that the motion to transfer be heard immediately, the movant must style the motion "URGENT AND NECESSITOUS" and immediately contact the District Judge's chambers in accordance with L.U.Civ.R. 7(b)(8).

(c) *Electronic Filings; Signatures and Verification; Administrative Procedures.* — Rules 5(d)(3) and 83 of the FEDERAL RULES OF CIVIL PROCEDURE and Rule 57 of the FEDERAL RULES OF CRIMINAL PROCEDURE authorize courts to establish practices and procedures for electronically filing, signing and verifying documents. Accordingly, the district courts for the Northern District and the Southern District of Mississippi have implemented Administrative Procedures for Electronic Case Filing prescribing the proce-

dures and standards governing electronically filing, signing and verifying documents.

(d) *Non-Filing of Pre-Discovery Disclosures and Discovery Materials.* —

(1) **Pre-Discovery disclosures.** — Pre-discovery disclosures of core information under L.U.CIV.R. 26.1(A) should not be filed with the clerk of court until the disclosures are used in a proceeding or the court orders that they be filed. The party serving disclosures must file a notice of service of pre-discovery disclosure of core information [Official Form No. 2(c)].

(2) **Depositions.** — As depositions in civil actions are not filed, the court reporter will forward the original of a deposition to the party responsible for its taking; the party must retain the original and is its custodian. Immediately upon receipt of the original deposition, the party serving as custodian must file a copy of the cover sheet of the deposition and a notice that all parties of record have been notified of its receipt by the custodian [Official Form No. 2(a)].

(3) **Discovery.** — Interrogatories under FED. R. CIV. P. 33, Requests for Production or Inspection under FED. R. CIV. P. 34, and Requests for Admission under FED. R. CIV. P. 36, must be served upon other counsel or parties, but not filed with the court. The party who served the discovery request or the response must retain the original and become the custodian and file a notice of service with the court [Official Form No. 2(b)].

(4) **Filing for use in relation to motions.** — If disclosures under FED. R. CIV. P. 26(a)(1) or (2), interrogatories, requests, answers, responses or depositions are necessary to a pretrial motion that might result in an order on any issue, unless already of record and referenced by citation to the docket entry(ies), the moving party must file the portions to be used as an exhibit to the motion.

(5) **Filing for use on Appeal.** — When documentation of discovery or disclosures not in the record is needed for appeal purposes, a party may apply for a court order directing or the parties may stipulate to the filing of the necessary discovery or disclosure papers.

**HISTORY:** Amended effective December 1, 2010; amended effective December 1, 2019; amended December 1, 2021.

## Rule 7. Motions and other papers.

(a) *Trial briefs.* — Whether to submit a trial brief is within the discretion of the parties, but any brief must be filed in CM/ECF and simultaneously served on all other parties.

(b) *Motion practice.* — Any written communication with the court that is intended to be an application for relief or other action by the court must be presented by a motion in the form prescribed by this Rule.

(1) **Applicability.** — The provisions of this rule apply to all written motions filed in civil actions.

(2) **Filing, Deadlines, Proposed Orders.** — Any motion, response, rebuttal and supporting exhibits, including memorandum briefs in support, must be filed. All affidavits, 28 U.S.C. § 1746 declarations, and other supporting documents and exhibits, excluding the memorandum brief, must be filed as exhibits to the motion, response or rebuttal to which they relate. The memorandum brief must be filed as a separate docket item from the

motion or response and their exhibits. All supporting exhibits must be denominated in the court's electronic filing system by both an exhibit letter or number *and* a meaningful description. Further, all supporting exhibits not already of record and cited in the motion, response or rebuttal by docket entry, must normally be filed under the same docket entry and denominated separately in the court's electronic filing system as exhibits to the motion, response or rebuttal to which they relate, unless doing so is not practicable, in which case supporting exhibits may be filed as separate docket item attachments, associated by the docket number of the motion, response or rebuttal to which they relate. Counsel must file a memorandum brief as a separate docket item from the motion or response to which it relates and *must not make the memorandum brief an exhibit to a motion or response*, except in the case of a motion for leave to submit the referenced memorandum brief. If leave of court is required under Fed.R. Civ. P. 15, a proposed amended pleading must be an exhibit to a motion for leave to file the pleading, and if the motion is granted, the movant must file the amended pleading as a separately docketed item within seven (7) days from entry of the order granting the motion.

(A) Affirmative defenses must be raised by motion. Although the affirmative defenses may be enumerated in the answer, the court will not recognize a motion included within the body of the answer, but only those raised by a separate filing.

(B) Other than discovery motions under Rule 37, a motion may not exceed four pages, excluding exhibits, may contain only the grounds for the request and may not contain legal argument or citations to case law or other secondary authority.

(C) A party must file a discovery motion sufficiently in advance of the discovery deadline to allow response to the motion, ruling by the court and time to effectuate the court's order before the discovery deadline.

(D) Unless otherwise ordered by the Case Management Order, all case-dispositive motions and motions challenging an opposing party's expert must be filed no later than fourteen calendar days after the discovery deadline.

(E) Motions *in limine* other than motions challenging another party's expert must be filed no later than twenty-one calendar days before the pretrial conference, and all responses must be filed no later than fourteen calendar days before the pretrial conference.

(F) A proposed order must be submitted to the judge for any motion that may be heard *ex parte* or is to be granted by consent. If the motion is referred to a magistrate judge, the proposed order must be submitted to the magistrate judge. The addresses for the district judges' and for the magistrate judges' chambers appear in the courts' *Administrative Procedures for Electronic Case Filings*.

### (3) Responses. —

(A) A response to a motion, all affidavits, 28 U.S.C. § 1746 declarations, the response memorandum and other supporting materials, including any objections, must be filed of record. Within the time allowed for response, the opposing party must either respond to the motion or notify the court of its intent not to respond.

(B) A separate response must be filed as to each separately docketed motion.

(C) A response to a motion may not include a counter-motion in the same document. Any motion must be an item docketed separately from a response.

(D) A response to a motion may not be included in the body of a pleading, but rather should be a separately docketed item denominated in the record as a response and should be associated by docket number with the motion to which it responds.

(E) If a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.

**(4) Memorandum briefs; Documents required with motions; Time limits; Failure to submit required documents; Motions not reurged.**

— At the time the motion is served, other than motions or applications that may be heard *ex parte* or those involving necessitous or urgent matters, counsel for movant must file a memorandum brief in support of the motion. Counsel for respondent must, within fourteen days after service of movant's motion and memorandum brief, file a response and memorandum brief in support of the response. Counsel for movant desiring to file a rebuttal may do so within seven days after the service of the respondent's response and memorandum brief. A party must make any request for an extension of time in writing to the judge who will decide the motion. Failure to timely submit the required motion documents may result in the denial of the motion. A pending nondispositive motion not reurged after discovery has been concluded and before the motion deadline, may be deemed moot and denied by operation of this rule.

(5) **Length and Form of memorandum briefs.** — Movant's original and rebuttal memorandum briefs together may not exceed a total of thirty-five pages, and respondent's memorandum brief may not exceed thirty-five pages.

(A) **Paper Size, Line Spacing, and Margins.** — All memorandum briefs must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(B) **Typeface.** — Either a proportionally spaced or a monospaced face may be used. A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. Text must be 12-point or larger, except that footnotes may be 11-point or larger.

(C) **Type Styles.** — All memorandum briefs must be set in a plain, roman style, although italics, highlighting or boldface may be used for emphasis. Case names must be italicized or underlined.

**(6) Notice and hearings.** —

(A) The court will decide motions without a hearing or oral argument unless otherwise ordered by the court on its own motion or, in its discretion, upon written request made by counsel in an easily discernible manner on the face of the motion or response.

(B) An evidentiary hearing or oral argument, where allowed, will be set at a time and place convenient to the judge. The court may, in its discretion, hear oral argument by electronic means.

(7) **Priority.** — The court will give priority to discovery motions, discovery appeals, immunity defense motions, motions to remand, and other jurisdictional motions.

(8) **Urgent or Necessitous Matters.** — When the motion relates to an urgent or necessitous matter, counsel for the movant must contact the courtroom deputy, or other staff member designated by the judge, and arrange a definite time and place for the motion to be heard. In such cases, counsel for movant must file a written notice to all other parties of the time and place fixed by the court for the hearing and must serve all documents upon other parties. A motion filed under this rule must be styled as an “URGENT AND NECESSITIOUS MOTION.” Upon receipt of the motion, the court in its discretion may direct counsel to submit memorandum briefs for the court’s consideration.

Unless a party files a motion for a protective order to limit the scope or quash the taking of a deposition within seven days of the date of the notice of deposition, the motion will not be considered urgent or necessitous.

(9) **Court reporters.** — If the hearing of a motion requires the presence of a court reporter, the party requesting a court reporter must obtain prior approval from the office of the district or magistrate judge before whom the motion is noticed.

(10) **Non-Dispositive Motions.** — All non-dispositive motions must advise the court whether there is opposition to the motion.

(11) **Untimely Motions.** — Any nondispositive motion served beyond the motion deadline imposed in the Case Management Order may be denied solely because the motion is not timely served.

(c) *Corporate Disclosure Statement.* — A non-governmental corporate party must file a statement identifying all of its parent corporations and listing any publicly-held company that owns ten percent or more of the party’s stock. The Corporate Disclosure Statement must be filed as a separate pleading with the party’s initial pleading. Each party must supplement the statement within a reasonable time of any change in the disclosure information.

**HISTORY:** Amended effective December 1, 2014; Amended effective December 1, 2015; amended effective December 1, 2016; amended effective December 1, 2018; amended effective December 1, 2021.

## **Rule 16. Pretrial conferences.**

(a) *Court order.* — The court will issue an Initial Order setting the deadline for the attorney conference required by FED. R. CIV. P. 26(f) and a date for a case management conference [CMC] with the magistrate judge. The court will strive to set the case management conference within sixty days of the filing of the first responsive pleading.

(b) *Exceptions:* —

(1) **Removed Civil Actions.** —

(A) In removed civil actions in which no motion to remand or motion to refer the action to the bankruptcy court is filed, the attorneys and unrepresented parties must confer as outlined in L.U.CIV.R. 26(f) within forty days, and all other deadlines will be determined accordingly.

(B) A motion to remand or a motion to refer an action to the bankruptcy court will stay the attorney conference and disclosure requirements and

all discovery not relevant to the remand or referral issue and will stay the parties' obligation to make disclosures pending the court's ruling on the motions. At the time the remand motion or referral motion is filed, the movant must submit to the magistrate judge an order granting the stay but permitting discovery concerning only the remand or referral issue. The parties must promptly notify the magistrate judge of any order denying a motion to remand or motion to refer and must promptly submit an order lifting the stay.

(C) Within fourteen days of the order lifting the stay, the parties must confer as outlined in L.U.CIV.R. 26(f) and all other deadlines will be determined accordingly. A scheduling conference will be held within sixty days after the stay is lifted.

(2) **Transferred civil actions.** — If the attorneys and unrepresented parties have not already conducted the conference required by FED. R. CIV. P. 26(f) in an action transferred to the district, the parties must do so within fourteen days of the action's transfer and all other deadlines will be determined accordingly.

(3) **Motions to Compel Arbitration and Motions Asserting Immunity or Jurisdictional Defense.** —

(A) A motion to compel arbitration, or a motion asserting an immunity defense or a jurisdictional defense must be raised by a separate motion as expeditiously as practicable after service of process. A motion asserting lack of jurisdiction must be filed at least seven days before the Case Management Conference or the movant may be deemed to have waived the automatic stay provision of subsection (B).

(B) Filing a motion to compel arbitration, or a motion asserting an immunity defense or jurisdictional defense stays the attorney conference and disclosure requirements and all discovery, pending the court's ruling on the motion, including any appeal. Whether to permit discovery on issues related to the motion and whether to permit any portion of the case to proceed pending resolution of the motion are decisions committed to the discretion of the court, upon a motion by any party seeking relief.

(C) At the time the motion to compel arbitration, or the motion asserting an immunity defense or jurisdictional defense is filed, the moving party must submit to the magistrate judge a proposed order granting the stay.

(D) The plaintiff must promptly notify the magistrate judge of a decision on the motion and must submit a proposed order lifting the stay. Within fourteen days of the order lifting the stay, the parties must confer in accordance with L.U.CIV.R. 26(c), and all other deadlines will be determined accordingly.

(E) A case management conference will be scheduled within sixty days of the order lifting the stay.

(4) **Civil asset forfeiture actions.** —

(A) In civil asset forfeiture actions in which the United States files a motion challenging the claimant's standing, all discovery not relevant to the standing issue will be stayed pending the court's ruling on the standing issue.

(B) At the time the motion challenging the claimant's standing is filed, the United States must submit to the magistrate judge a proposed order granting the stay but permitting discovery on the standing issue.

(C) The parties must promptly notify the magistrate judge of a decision on the standing issue and must submit a proposed order lifting the stay if it is determined that the claimant has standing.

(D) A case management conference will be scheduled within sixty days of the order lifting the stay.

(c) *Submission of written proposed case management plan and scheduling order.* — The magistrate judge may require the parties to submit a proposed case management order no later than fourteen days after the attorney conference. [See Official Form No. 1]. Disagreements with the content of the proposed case management order must be noted on the submitted written plan. Each party must submit to the magistrate judge a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including a candid evaluation of the possibilities for settlement.

(d) *Time of disclosures.* — Unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order, the parties must make the disclosures required by FED. R. CIV. P. 26(a) [L.U.CIV.R. 26.1(a)(1)], no later than fourteen days after the attorney conference, but in no event may they be made later than seven days before the Case Management Conference.

(e) *Case management conference.* — On the date set by court order, the magistrate judge will hold a case management conference in accordance with FED. R. CIV. P. 16(b) and 26(f).

(f) *Case management order.* —

(1) The judicial officer will enter the case management order no more than fourteen calendar days after the case management conference. [Official Form No. 1].

(2) The court will not require the parties to reserve a period in excess of three weeks for trial following the trial date.

(g) *Settlement Conference.* —

(1) The court may schedule an initial settlement conference in the case management plan and scheduling order or by other order as the interests of justice may dictate.

(A) Counsel for any party may request at any time that the judicial officer assigned to the case schedule a settlement conference.

(B) The court may order mediation in addition to, or in lieu of, a settlement conference.

(C) The parties are required to undertake discovery necessary for meaningful settlement discussions before a settlement conference or mediation.

(2) Lead counsel for each party, individual parties not represented by legal counsel, and representatives of each corporate party, organization, or similar entity must appear at the conference. If lead counsel has been admitted *pro hac vice*, local counsel must also appear at the conference.

(A) The party representative attending the conference must have full settlement authority to bind the party for settlement purposes.

(B) If approved in advance by the court, a party or party representative may, in lieu of attending the conference in person, be immediately available by telephone during the entire settlement conference. The court may also order that a representative of any intervening party with full

settlement authority also attend the conference in person or be available by telephone.

(C) At the request of any party, the court will issue a notification of the settlement conference which the party may then forward to any entity having any type of subrogation lien that would need to be considered during settlement negotiations. The failure of a party to attend a settlement conference, or to have present at the conference a representative with reasonable settlement authority, may result in the assessment of sanctions against the offending party.

(3) The notice of a settlement conference will set forth the format of the conference and will include any requirement for information or documents that must be submitted to the court before or at the conference.

(4) No statement, oral or written, made by any party to the court or counsel(s) opposite during settlement negotiations under this rule will be admissible or used in any fashion in the trial of the case or any related case.

(5) At least seven days before the settlement conference, each party must submit to the court a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including settlement negotiations to date and possible settlement figures. Plaintiff(s) must provide an estimate of damages itemized by category. Counsel must also furnish a good faith estimate of the total expense of carrying the litigation through trial and the appellate processes, if not settled, and must have discussed and must represent to the court that they so discussed these expenses with their clients. The settlement memoranda are not to be exchanged or filed in the record, are to be viewed only by the court, and will be destroyed upon exhaustion of settlement negotiations.

(h) *Cases excluded from scheduling and disclosure requirements.* — Those categories of proceedings appearing in FED. R. CIV. P. 26(a)(1)(B) are exempt from the scheduling and disclosure requirements of these rules.

(i) *Alternative dispute resolution program.* — The courts have adopted a uniform Alternative Dispute Resolution Plan. That plan is appended to these Local Rules.

(j) *Final pretrial conferences and pretrial orders.* —

**(1) Cases in which conference to be held; scheduling; rule of magistrate judge.** — A final pretrial conference is to be held in all civil actions, subject only to the exceptions hereinafter noted.

(A) The judicial officer assigned to try the case will attempt to conduct the pretrial conference. If the judicial officer is unable to schedule the pretrial conference in a timely manner, however, then he or she may direct that the conference be held before another judicial officer. This conference will be scheduled not more than forty-five days prior to trial.

(B) Whenever possible, a final pretrial conference will be separately scheduled at a date, place, and hour and for such period of time as the subject matter of the particular civil action may require, but in all events a final pretrial conference will be scheduled in such manner as not to cause undue or inordinate inconvenience to counsel scheduled for final pretrial conferences in other cases.

**(2) When conference may be dispensed with; Pretrial order still required; contents.** — The court recognizes that a formal final pretrial conference may not be needed in all cases. The court, either on its own

motion or by request of the parties made not later than fourteen days before the scheduled conference, may determine that a final pretrial conference is unnecessary and excuse the parties from attendance, but in that event the jointly agreed pretrial order must be submitted to the judge before whom the conference was to have been held and all requirements of this rule must be complied with at or before the time and date set for the final pretrial conference, unless the judge fixes another date for submission of the pretrial order. If no formal final pretrial conference is held, counsel must submit to the appropriate judge a jointly agreed final pretrial order [Official Form No. 3] which must set forth:

(A) Any jurisdictional question.

(B) Any questions raised by pending motions, including motions *in limine*.

(C) A concise summary of the ultimate facts claimed by plaintiff(s), by defendant(s), and by all other parties.

(D) Facts established by pleadings or by stipulations or admissions of counsel.

(E) Contested issues of fact.

(F) Contested issues of law.

(G) Exhibits (except documents for impeachment only) to be offered in evidence by the parties respectively. If counsel cannot in good faith stipulate the authenticity or admissibility of a proposed exhibit, the order must identify the same and state the precise ground of objection.

(H) The names of witnesses for all parties, stating who *Will Be Called* in the absence of reasonable notice to opposing counsel to the contrary and who *May Be Called* as a possibility only. Neither rebuttal nor impeachment witnesses need be listed. The witness list must state whether the witness will give fact or expert testimony, or both, whether the witness will testify as to liability or damages, or both, and whether the witness will testify in person or by deposition.

(I) Any requested amendments to the pleadings.

(J) Any additional matters to aid in the disposition of the action.

(K) The probable length of the trial.

(L) Full name, address, and phone number of all counsel of record for each party.

(3) **Submission by magistrate judge to trial judge.** — If the pretrial conference is held before a magistrate judge who will not try the case, the magistrate judge will submit the agreed, approved pretrial order to the trial judge, with copies to counsel and to the clerk of court.

(4) **Duty of counsel to confer; exhibits; matters to be considered at conference; sanctions.** — The following provisions of this rule apply, regardless of whether the pretrial order is entered by stipulation of the parties or following a formal final pretrial conference:

(A) Counsel must resolve by stipulation all relevant facts that are not in good faith controverted and must exchange with counsel for all other parties true copies of all exhibits proposed to be offered in evidence, other than those to be used for impeachment purposes only, and must stipulate the authenticity of each exhibit proposed to be offered in evidence by any party unless the authenticity of any such exhibit is in good faith controverted.

(B) All exhibits are to be pre-marked, and lists briefly describing each are to be exchanged among counsel and presented to the court at the beginning of the trial, unless otherwise directed by the court.

(C) At any formal final pretrial conference, the judge will confer with counsel regarding proposed stipulations of facts and contested issues of fact and law, and will inquire as to the reasonableness of any party's failure to stipulate or agree as to the authenticity or admissibility of exhibits. If the court determines that any party or his attorney has failed to comply with this rule, such party or his attorney will be subject to appropriate sanctions.

(5) **Depositions.** — Depositions to be introduced in evidence other than for rebuttal or impeachment purposes must be abridged before the pretrial conference or submission of the order, as follows:

(A) The offering party must designate by line and page the portions of the deposition it plans to offer.

(B) The opposing party or parties must designate by line and page any additional portions of the deposition to be offered and must identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(C) The offering party must thereafter identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(D) Videotaped depositions must be edited before trial as required by the pretrial order.

(6) **Procedure at final pretrial conference.** — In addition to the preceding provisions, the following provisions apply to the formulation of a pretrial order by formal conference before the magistrate judge, or in any appropriate case, the district judge.

(A) **Counsel must attend: sanctions.** — All scheduled conferences must be attended by counsel of record who will participate in the trial and who have full authority to speak for the party and enter into stipulations and agreements. Counsel must have full authority from their clients with respect to settlement and must be prepared to inform the court regarding the prospects of settlement. The court may require the attendance or availability of the parties, as well as counsel. Should a party or his attorney fail to appear or fail to comply with the directions of this rule, an *ex parte* hearing may be held and a judgment of dismissal or default or other appropriate judgment entered or sanctions imposed.

(B) **Preparation for the conference.** — Counsel must comply with the requirements of subdivisions (j)(4) and (j)(5) of this rule as soon as practicable before the pretrial conference and submit to the court and counsel opposite a proposed pretrial order setting forth his proposals for inclusion in the pretrial order in accordance with subdivision (j)(2) of this rule and any instructions which the court may in its discretion issue.

(C) **Preparation of the pretrial order.** — After the final pretrial conference has concluded, a pretrial order must be prepared by counsel in conformity with Official Form No. 3 and submitted to the court for entry. Responsibility for preparation of the pretrial order and the deadline for its submission will be fixed by the judicial officer before whom the conference was held. If a magistrate judge has conducted the conference on behalf of

a district judge, he or she will require counsel to make such corrections as the magistrate judge deems necessary before transmitting the order to the district judge.

(D) **Additional conferences.** — After the final pretrial conference has been conducted, the court will not hold an additional pretrial conference except in those exceptional situations in which the judicial officer determines that an additional conference would materially benefit disposition of the action.

(7) **Effect of pretrial order.** — The pretrial order controls the subsequent course of the action unless modified by the trial judge at or before the trial, upon oral or written motion, to prevent manifest injustice.

(8) **Conference scheduling; conflicting settings.** — In scheduling all pretrial conferences of any nature, the judge will give due consideration to conflicting settings but not to the mere convenience of counsel. If a scheduling order has been entered in an action, no final pretrial conference will be held until after the discovery deadline has expired. Failure to complete discovery within such deadline is not an excuse for delaying the final pretrial conference nor for securing continuance of a case which has been calendared for trial.

(9) **Discretion of district judge.** — Notwithstanding any of the provisions of this rule to the contrary, a district judge may, in his or her discretion, in any assigned case, conduct any or all pretrial conferences and may enter or modify a scheduling order.

(k) *Conflicting settings and requests for continuances.* — When the court has set a case for trial, other hearing, or pretrial conference that conflicts with a court appearance of counsel in other courts, the first case having a firm setting will control, whether set by this or some other court, and other courts are expected to yield to the prior firm setting, as this court will do when other cases have prior settings in other courts, consistent with the policy adopted by the State-Federal Judicial Council. When a case has not been reached as scheduled, the court, in resetting the case, will take into account the obligations of counsel on the basis of the first-setting rule. If a conflict develops, it is the absolute duty of counsel to inform the court of the later setting in order that the conflict might be resolved and calendars cleared for other settings. It is essential for counsel and the court or courts involved to resolve potential conflicts at the earliest practical date.

**HISTORY:** Amended effective December 1, 2015; amended effective December 1, 2016; amended effective December 1, 2018; amended effective December 1, 2019; amended effective December 1, 2021.

### **Rule 83.1. Attorneys: admission and conduct.**

(a) *General admission of attorneys.* —

(1) Any attorney who is a member of the Mississippi Bar shall satisfy the following requirements for admission to this court:

(A) The attorney must produce a photocopy of the certification of admission to practice in Mississippi either from the Mississippi Bar or the Mississippi Supreme Court, dated no later than sixty days prior to its submission;

(B) the attorney must be sponsored by a member of the bar of this court who must certify that the applicant is a member in good standing in the

Mississippi Bar and is familiar with the LOCAL RULES and the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT; and

(C) the attorney must be presented to the court only after filing his or her documentation with the clerk of court, paying the admission fee, and signing the oath. An applicant may then be presented to a district or magistrate judge of this court for formal admission, which may be accomplished in open court or in chambers at any time convenient to the judge. An applicant for admission may be presented for formal admission to any district or magistrate judge in either the Northern or Southern District of Mississippi.

(b) *Appearances.* —

(1) **Requirement of local counsel.** — When a party appears by attorney, every complaint, answer, motion, application, notice of deposition, or other paper on behalf of the represented party must be signed, and every deposition, mediation, conference or hearing must be attended by at least one attorney of record admitted to the general practice of law in the district court in which the action is pending.

(2) **Designation of lead counsel.** — In any civil action in which a single party is represented by multiple counsel, the initial pleadings filed on behalf of the party must designate at least one attorney as lead counsel.

(3) **Withdrawal by attorneys.** — When an attorney enters an appearance in a civil action, he or she must remain as counsel of record until released by formal order of the court. An attorney may be released only on motion signed by the client(s) or upon a duly noticed motion to all parties, including the client and presented to the judicial officer to whom the case is assigned, together with a proposed order authorizing counsel's withdrawal.

(c) *Discipline and reinstatement.* —

(1) **Original discipline.** — The court may, after notice and an opportunity to show cause to the contrary, if requested, censure or reprimand any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules, the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT, or any other rule of the court. If the conduct or failure to comply is found to be flagrant, the court may, after notice and opportunity to show cause, revoke or suspend the attorney's admission to practice before the court. Such action by the court will be reported by the clerk of the court to the executive director of the Mississippi Bar, or the appropriate official of the bar of any non-resident attorney admitted to practice before this court. If the court finds that the conduct complained of affords reasonable grounds for more stringent disciplinary action, including suspension or disbarment, the matter will, in the case of a member of the Mississippi Bar, be referred to the Mississippi Bar for appropriate action under MISS. CODE ANN. § 73-3-301, et seq. (1972) or subsequent amendments. If the attorney is not a member of the Mississippi Bar, the matter will be referred to the appropriate disciplinary authority of the bar of which he or she is a member.

Nothing herein may be construed to limit the inherent disciplinary power of the judicial officers of this court, including the power of a district judge to immediately suspend a member of the bar convicted of a felony in a case heard before him or her.

(2) **Reciprocal discipline.** — When it is shown to the court that any member of its bar has been suspended or disbarred from practice by any

other court of record, the member will be subject to suspension or disbarment by the district court. The disciplinary action is initiated by a show-cause order issued by the court, notifying the attorney that disciplinary proceedings have been commenced, describing the disciplinary proceedings conducted in the other jurisdiction, and requesting that the member appear and show cause why he or she should not be suspended or disbarred from practice before the district court. The member will be afforded thirty days to show cause why he or she should not be suspended or disbarred; the time for response may be extended by the court for proper reason. The member's response to the show-cause order is limited to claims of (A) lack of procedural due process in the original proceedings or (B) lack of substantial evidence to support the factual findings. Lack of procedural due process in the original proceedings, however, does not preclude original disciplinary action by the court as provided in subparagraph 1. Upon response to the show-cause order, and after hearing, if one is requested, or upon expiration of the period allowed for response, if no response is made, the court may enter an appropriate order in which it may impose discipline, including, but not limited to, the same discipline administered by the other jurisdiction.

(3) **Reinstatement.** — No application for relief from suspension or reinstatement after disbarment will be considered by this court unless the applicant can show that he or she is an attorney in good standing with the Mississippi Bar or with the jurisdiction in which he or she may have been suspended or disbarred. Any attack upon the denial of readmission or relief from suspension/reinstatement after disbarment is limited to claims of (A) lack of procedural due process in the reinstatement proceeding of the other jurisdiction or (B) lack of substantial evidence to support the factual findings. Upon the applicant's showing of good standing, the court may vacate or continue the disbarment or suspension, or diminish the suspension, as may be appropriate.

(d) *Pro hac vice admission of attorneys:* —

(1) **Definitions.** —

(A) A "non-resident attorney" is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and is not disbarred or suspended from practice in any jurisdiction.

A non-resident attorney is eligible for admission *pro hac vice* if that lawyer:

i. lawfully practices solely on behalf of the lawyer's client and its commonly owned organizational affiliates, regardless of where the lawyer resides or works; or

ii. neither resides nor is regularly employed at an office in this state;

or

iii. resides in this state but (a) lawfully practices from offices in one or more other states and (b) practices no more than temporarily in this state, whether by admission *pro hac vice* or in other lawful ways; or

iv. is a government attorney employed on a full time basis and is lawfully admitted to practice in another jurisdiction.

(B) A "resident attorney" is an attorney admitted to practice in either the Northern or Southern District of Mississippi after complying with L.U.CIV.R. 83.1(a).

(C) A “client” is a person for whom or entity for which the nonresident attorney has rendered services or by whom the attorney has been retained before the lawyer performs services in this state.

(D) “This state” refers to Mississippi. This rule governs proceedings before any federal court located in this state.

(2) **Authority of the Court to Permit Pro Hac Vice Admissions.** — A federal court of this state may, in its discretion, admit an eligible nonresident attorney retained to appear in a particular civil proceeding pending before that court to appear pro hac vice as counsel in that proceeding. No admission will be effective until all required fees are received by the clerk of the court. This rule provides the only authority under which a nonresident attorney who is not a member of the Mississippi Bar and not admitted to practice before the Mississippi Supreme Court may practice in a United States District Court serving Mississippi. These rules contain no “grandfathering” provision allowing a non-resident attorney not a member of the Mississippi Bar to practice in a district court other than on a case-by-case pro hac vice admission.

(3) **Association and duties of a resident attorney.** — No eligible nonresident attorney may appear pro hac vice unless and until a resident attorney has been associated. The resident attorney remains responsible to the client and responsible for the conduct of the proceeding before the court. It is the duty of the resident attorney to advise the client of the resident attorney’s independent judgment on contemplated actions in the proceedings if that judgment differs from that of the non-resident attorney. At least one resident attorney must sign every pleading filed with the court and must personally appear and participate in all trials, in all pretrial conferences, case management conferences and settlement conferences, hearings and other proceedings conducted in open court, and all depositions or other proceedings in which testimony is given.

(4) **Pro hac vice application.** — A non-resident attorney seeking to appear pro hac vice in a proceeding pending in a federal court of this state must submit a verified application, as set out in Form 6, to associated counsel. Local counsel will retain the original application and file it, in the format required by the Administrative Procedures for Electronic Case Filing, in the court where the litigation is filed, accompanied by a certificate of good standing issued within ninety days of the date of the application by the licensing authority for all states, as well as the District of Columbia, where the applicant has been admitted to practice law. The application must be served on all parties who have appeared in the case and must include proof of service. The verified application must contain the following information:

(A) the applicant’s residence and business address;

(B) the name, address, and phone number of each client sought to be represented;

(C) the courts before which applicant has been admitted to practice and the respective period(s) of admission;

(D) whether the applicant (i) has been denied admission pro hac vice in this state, (ii) has had admission pro hac vice revoked in this state, or (iii) has otherwise formally been disciplined or sanctioned by any court in this state in the last five years. If so, specify the nature of the allegations; the name of the authority bringing such proceedings, the caption of the

proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings;

(E) whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(F) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so, the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substances of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application);

(G) the name and address of each court and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;

(H) the style and number of each case, including the name of the court, in which the applicant has appeared as counsel pro hac vice within the immediately preceding 12 months, is presently appearing as counsel pro hac vice, or has pending applications for admission to appear pro hac vice;

(I) an affirmative statement that the applicant has read and is familiar with the LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND SOUTHERN DISTRICT OF MISSISSIPPI and the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi, including but not limited to the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT required of the members of the Mississippi Bar as well as the procedures of this court;

(J) the name, address, telephone number, e-mail address and bar number of the resident attorney whom the applicant has associated in the particular case; and

(K) the signature of the resident attorney associated by the applicant certifying the resident attorney's agreement to the association and his/her appearance of record with the non-resident attorney.

i. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between those other matter(s) and the proceeding for which the applicant seeks admission;

ii. any special experience, expertise, or other factor the applicant believes to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular case.

The non-resident attorney's application may provide the following optional information:

(5) **Application fee.** — Simultaneously with the filing of the verified application, the applicant must pay a non-refundable fee in an amount set by

the court by general order. An applicant will not be required to pay the fee established by L.U.CIV.R. 83.1(b)(5) if the applicant will not charge an attorney fee to the client(s) and is:

(A) employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or

(B) applying to appear in a habeas corpus proceeding or criminal case for an indigent defendant.

**(6) Objection to application:** — A party to the proceedings may file an objection to the application or seek the court's imposition of conditions to its being granted. The objecting party must file its written objection by way of a verified affidavit containing or describing information establishing a factual basis for the objection and may seek denial or modification of the application. If the application has already been granted, the objecting party may move that the pro hac vice admission be revoked. The court may grant or deny the application or modification of the application without the necessity of any hearing, at the court's discretion.

**(7) Standards for admission.** — The court has discretion whether to grant applications for admission pro hac vice and to set the terms and conditions of admission. An application ordinarily should be granted unless the court finds reasons to believe that:

(A) admission would be detrimental to the prompt, fair and efficient administration of justice;

(B) admission would be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(C) one or more of the clients the applicant proposes to represent would be at risk of receiving inadequate representation and cannot adequately appreciate the risk;

(D) the applicant has engaged in more than five (5) separate unrelated cases or other matters before the Northern and Southern Districts of the federal courts of this state within the last twelve (12) months immediately preceding the appearance in question; or

(E) the applicant had, before the application, filed or appeared in the federal court without having secured approval under these rules.

**(8) Revocation of admission.** — Admission to appear as counsel pro hac vice in a proceeding will be revoked if the attorney is suspended or disbarred by any other court of record during the pendency of the action in which he or she has been granted leave to appear, and lack of due process or lack of substantial evidence to support the factual findings in the original proceeding will not preclude revocation. Admission to appear as counsel pro hac vice in a proceeding may also be revoked for any of the reasons listed in Section 7(a-c) above or just cause determined by the court.

**(9) Suspension or disbarment of resident attorney.** — In the event the resident attorney associated by the non-resident attorney in a particular case is suspended, disbarred, or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the nonresident attorney before further proceeding in the pending case, must associate a new resident attorney who is in good standing to practice law in Mississippi and admitted to practice in the Northern or Southern District

federal courts for the State of Mississippi and must file an amendment to the verified application required by L.U.CIV.R. 83.1(4).

(10) **Attorneys representing the United States.** — Attorneys representing the United States or any of its departments, agencies or employees are permitted to appear on behalf of the United States government and to represent its interests in any matter in which the United States government is interested upon proper introduction to the court by the United States Attorney for the district or one of the United States Attorney's assistants.

(e) *Authorization to practice law in the Northern and Southern Districts of Mississippi Federal Court.* — A law student who is enrolled in a legal internship program or a clinical legal education course in an American Bar Association accredited law school of this state and who has been granted limited admission under the Mississippi Limited Practice Act, Miss. Code Ann. §§ 73-3-201 to -211 (1972), may also be authorized to engage in limited practice in this court with the following additional conditions and limitations:

(1) The law student who applies for admission to limited practice must certify that the student is familiar with federal procedural and evidentiary rules as well as these Local Rules. The law student must take the oath and be admitted to limited practice by order of a judicial officer of this court.

(2) Upon filing the oath and order in the office of the clerk of court, the law student will be authorized to engage in limited practice in any federal court in the state subject to any controls and limitations ordered by the court.

(3) The authority for limited practice by a law student will continue during any regular school term during which the law student is enrolled in a legal internship or clinical legal education course, including interim sessions between terms. The court may revoke the authority granted at any time.

(4) A law student may not directly represent clients but may only assist the supervising attorney or clinical teacher, who must be admitted to practice in this court and otherwise meet the requirements of Miss. Code Ann. §73-3-205, in representing their clients. All pleadings and entries of record in courts must be signed by the supervising attorney or clinical teacher.

(5) Law students may appear and participate in trials and hearings in court if the supervising attorney or clinical teacher is present and supervising the student.

(6) Law students assigned to prosecuting attorneys may assist the supervising attorney before grand juries subject to the same prohibitions and penalties as to disclosure and secrecy as are members of the grand jury.

(7) Law students will be subject to the same standards and rules of professional conduct and ethics and the same rules of discipline as members of the bar of this court, and each must certify in writing that the student has read and is familiar with the Mississippi Rules of Professional Conduct.

(8) A law student may not receive compensation for the student's services from the client or from any other source, directly or indirectly, for participation, other than the award of academic credit by the student's law school. This rule does not prevent the court from awarding costs and expenses which may otherwise be authorized by law to any governmental agency, legal assistance program, or law school clinical instruction program for the services provided by the student. As in all other cases, the court will

determine the propriety and amount of an award of costs, including reasonable attorney's fees.

The judicial officer before whom a student is participating may, at any time and with or without cause and for any reason, revoke the authorization established by this Rule.

**HISTORY:** Amended effective December 1, 2014; effective December 1, 2016; amended effective December 1, 2019; amended effective December 1, 2021.

# MISSISSIPPI RULES OF APPELLATE PROCEDURE

## EFFECTIVE JULY 1, 2017

### **Rule 46. Admission, withdrawal, and discipline of attorneys.**

#### **JUDICIAL DECISIONS**

##### **Out-of-state counsel.**

Defendant was not denied the right to counsel of choice when defendant's out-of-state counsel was prohibited from further questioning witnesses after the trial court became concerned that counsel had violated the rules of discovery, attempted to circumvent the court's prior ruling, and had repeatedly challenged the court's rul-

ings during trial. Furthermore, the out-of-state counsel was permitted to sit at counsel table and assist in-state co-counsel during the remainder of the trial, and nothing prohibited defendant from meeting with counsel. *Copes v. State*, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021)..

















































